

November 10, 2010

**To: Chuck Bell
Bob Stern**
**From: Gary Winuk
Jeannine English**
Subject: Robocalls Recommendations

Background

We were assigned the task of providing recommendations back to you on the topic of robocalls. Below are our recommendations, which reflect outreach to a limited number of other task force members and individuals, and following the guidance provided by you as to specific topics to be considered.

Assigned Topics:

- 1. Consider simplification or clarification of Section 84310 requirements for phone banks.**
- 2. Review PUC and FCC requirements as they impact political calls and existing phone bank requirements.**
- 3. Require scripts to be sent to the FPPC within 2 days of call.**

Recommendations:

- 1. Clarification of Section 84310:** We recommend amending the Section and Regulation 18440 to clarify its provisions. We do not recommend substantive changes to them, but rather amending them to provide a clearer and more accessible Statute and regulation on this topic.

Rationale: Disclosure for phone banks, as for broadcast and print campaign advertising is important to the disclosure purposes of the Act. However, Section 84310 and Regulation 18440 attempt to cover disclosure in a way that encompasses a broad range of committees, types and combinations of entities paying for calls, and payments for calls made at the behest of other entities and by multiple entities. As a result, the Statute and regulation read in a complicated and confusing manner that does not necessarily provide clear guidance to those participating in the political process through telephone campaign calls who wish to comply with the Act.

Applicable statutes/regulations/cases: Government Code Section 84310, FPPC Regulation 18440

2. PUC and FCC requirements: We recommend the Task Force seek policy guidance on whether to allow or disallow political robocalls in California and, at a minimum, to move the provisions governing political robocalls out of the Public Utilities Code and into the PRA. If allowed, guidance should also be sought as to whether a “do not call” system for people to opt out of political robocalls should be created. We further recommend that the FCC required disclaimer for political robocalls be added to the PRA requirements for political robocalls to make them consistent and avoid a trap for the unwary seeking to comply with both sets of laws. If pursued, the privacy considerations of voters should be considered, and outreach to the PUC should be conducted to determine their position on these issues.

Rationale: Currently, the requirements for political robocalls are spread across three areas of law: The PRA, the Public Utilities Code (PUC) and federal law and regulation with the Federal Communication Commission (FCC). The result of having this diverse set of laws has resulted in inconsistencies that are not leading to effective public policies, regardless of one’s position on allowing, disallowing or regulating political robocalls. Specifically, the PUC allows political robocalls, but requires either (1) that a live person introduce the call if someone answers it and: states the nature of the call; provides the name, address and phone number of the business organization being represented, if any; and inquires as to whether the person called consents to hear the pre-recorded message, or (2) that the automated dialing device terminate the call if a live caller answers. However, the FCC exempts political robocalls from its robocall provisions but simply provides the disclosure that must be provided (identification of with whom the robocall is being called for and either a contact phone number or address). Because of the FCC exemption, state laws vary greatly in terms of whether or not political robocalls are prohibited and the restrictions placed upon them.

Because of this diverse set of laws, in practice two things have happened. First, the requirements of the live person introduction in the PUC has basically eliminated the use of political robocalls to persons who actually answer their phone. Instead, robocalls initiated in California now generally disconnect when a live person answers and only leave messages on answering machines or voicemail systems. Second, political robocalls are now being initiated from other states outside the jurisdiction of the PUC that do not have restrictive regulations on them, thus avoiding California’s requirements.

Because political robocalls are now either being placed out of state or are just disconnecting when a person answers the phone, a reconsideration of the policy is necessary to either achieve the goal of truly prohibiting political robocalls, or finding the best way to limit them in California. Options for action could include:

- Allowing political robocalls in California with disclosure.
- Encouraging FCC action to prohibit political robocalls or conform to California's requirements for introduction by a live person.
- Encouraging FCC action to provide authority to regulate calls to a California number regardless of where they're placed from, i.e. authority to regulate out of state robocalls placed to California numbers.
- Allowing political robocalls in California with disclosure and the creation of a "do not call list."

At a minimum, the statutes related to political robocalls should be moved to the PRA to avoid traps for the unwary. Moving them to the PRA will also allow for the enforcement of violations of the current statutes by the FPPC Enforcement Division. Currently, complaints to the PUC are first given to the telephone company who then contacts the political robocall business and gives them time to correct the problem. Only if that process doesn't work does the PUC accept a complaint directly about violations.

Applicable statutes/regulations/cases: Government Code Section 84310, FPPC Regulation 18404.1, Public Utilities Code Sections 2871-2876, 5 U.S.C. Section 227, 47 C.F.R. § 64.1200

3. Require scripts to be sent to the FPPC within 2 days of call: We recommend that all scripts, as provided for in Section 84310 with regard to campaign telephone calls, be required to be sent to the FPPC within 2 days of the first day of the calls being placed.

Rationale: The tracking and monitoring of campaign telephone calls for compliance with the Act can be challenging. Having scripts required to be sent to the FPPC will go a long way to improving monitoring and compliance with its provisions.